

Corresponding Trade Union Laws in Sri Lanka with that of International Standards to Enable Professional Recognition

NKK Mudalige

Faculty of Law, General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka
namudi.mudalige@kdu.ac.lk

Abstract- *As a facet of professional recognition, identifying trade union rights in a country indeed is of immense importance. A “trade union” can be defined as a combination of people who are in the same or identical profession with common goals relating to their field where they raise voice for the conditions of their profession. It is worthy to note that trade unions make the foundation for collective voice and thereby framing a sort of professional recognition. Accordingly it can be pointed out that proper recognition of trade union within the legal background can be one approach to inculcate professionalism for national development where the quality raised by the collective voice is attended. Whether laws in Sri Lanka correspond with the international standards in order to provide the proper legal foundation to trade unionism requires to be inquired. Governing laws regarding this in Sri Lanka are 1978 Constitution, Trade Unions Ordinance No. 14 of 1935 and its amendments and Industrial Disputes Act No. 43 of 1950 and its amendments. Objectives of the study would be mainly to identify the relevant international standards covering trade unionism, to recognize Sri Lankan legal approach to trade unionism and to compare and evaluate the compatibility of Sri Lankan laws with that of international standards regarding trade unions. Legislations and international instruments will be used as primary sources and as secondary sources text books, scholarly articles, monographs, electronic sources will be utilized in this study. Study is carried out to discover whether laws governing trade unions in Sri Lanka are satisfactory when corresponding with international standards in order to provide a proper professional recognition which can be operated as a centre of initiative to enable national development.*

Keywords— *Unionism, Professional Recognition*

I. INTRODUCTION

Recognition of trade unions in the Sri Lankan legal framework can be traced back to 1935 which spots the enactment of the Trade Unions Ordinance No 14 of 1935.

A collection of people making the collective voice towards the betterment of their working conditions and other related requirements are the common objectives of

most of the trade union movements. Thus being recognized and fulfilment of the demands which are justifiable inevitably demonstrate a satisfactory working environment which promotes professional recognition. Utter professional recognition ultimately establishes a satisfactory workforce who will be providing the full strength towards the accomplishment of the business objectives which drives towards the national development.

The reason for articulation of international standards into the arena of legal recognition of trade unions must be discussed. International standards were introduced in order to protect workers and establish universality to ensure equal protection for all.

Indeed it is worthwhile to compare trade union laws in Sri Lanka with that of international standards. Accordingly it will evaluate whether the international standards align with the Sri Lankan legal criteria on the topic.

I. METHODOLOGY

Used methodology is qualitative since the topic under discussion is based on social sciences which limit the usage of quantitative methods due to its nature. Primary and secondary sources were used accordingly.

Primary sources were the legislations relating to trade unions in Sri Lanka and the international standards formulated by internationally recognized organizations pertaining to the topic.

Secondary sources were research papers and journal articles.

It was compared the Sri Lankan legislations and international standards to evaluate the level Sri Lanka has gone to correspond with the accepted criteria. Further the recommendations were placed to accommodate and promote further developments in the legal framework of Sri Lanka in this regard.

II. ANALYSIS

Professional recognition offers the general meaning of the acknowledgment of the professional status and ensuring the right to practice the profession. Enhancing the working conditions, best working practices and connected infrastructure integrate the professional recognition.

A trade union means an association carried on mainly, for the purpose of protecting and advancing the members' economic interests in connection with their daily work according to G.D.H. Cole (1918). Dale Yoder (1977) defined it as a continuing long term association of employees formed and maintained for the specific purpose of advancing and protecting the interest of the members in their working relationship.

Essence of the definition of trade union indicates that it ultimately drives on the purpose of advancement of the employee condition which is one facet of professional recognition aforementioned. Thus it shows the idea that idealizing the legal framework of trade union in Sri Lanka, taking international standards as the prototype ensures the professional recognition in one hand.

C. Right to Form a Trade Union, Become a Member of a Trade Union and Engage in Trade Union Activities

Universal Declaration of Human Rights (UDHR) in Article 23 (4) reads that;

Everyone has the right to form and to join trade unions for the protection of his interests.

International Covenant on Civil and Political Rights (ICCPR) in Article 22 reads that;

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) reads that;

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and

protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

It is evident that more or less world's leading human right documents marks the necessity for recognition of freedom of association inter alia the right to form trade unions, join them and engage in trade union activities.

Positive sight is envisaged in terms of ensuring the right to form a trade union and other related rights in Sri Lanka. Article 14 (1) (c) and Article 14 (1) (d) of the Constitution of the democratic socialist republic of Sri Lanka expressly recognizes the freedom of association and the freedom to form and join a trade union which connotes the respect towards the international standards abovementioned. Also it is worthwhile to indicate that Articles 14 (1) (d) and 14 (1) (c) of the Constitution are restricted by way of Articles 15 (2) and 15 (4) of the Constitution respectively in order to preserve the interests of a democratic society as expressed in most of the international standards.

In 1935 the Trade Unions Ordinance saw the light of the day which introduced more specific trade union rights to Sri Lankans. In its inception the Trade Unions Ordinance did not allow public offers to form, join or actively participate in the trade union movement. But later in 1948 by way of an amending Act to the same, articulated trade union rights to public officers. But, as warranted from international standards mentioned before few categories of public offers were restricted their trade union rights namely; judicial officers, members of the armed forces, police officers, prison officers and members of any corps established under the Agricultural Corps Ordinance. Logic behind the restriction is to

prevent unnecessary obstacles to the administration and security of the State from trade union actions which had been recognized internationally as a justifiable aspect.

D. Anti-union Discrimination

Labour standards introduced by the International Labour Organization (ILO) are also pertinent in this discussion since ILO is structured in a tripartite manner; bringing together the voice of workers, employees and government in one platform.

Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) provides from Article 2 that workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. Article 3 of the same recognizes the right to be represented and the right to participate in trade union activities. By way of the Convention of 1948 the right to organize is recognized making further smooth the surface to practice trade unionism. Following such mechanism domestic enactments were passed in Sri Lankan legislature with corresponding standards.

In the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) Article 1 (1) reads that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. It describes the anti-union discrimination acts such as prohibition of membership in trade unions to a specific employment category (other than legal restrictions) and dismissal of employees by reason of joining a trade union.

Although the Convention No 98 had interwoven in 1949, Sri Lanka codified the relevant law by way of an enactment in 1999. No matter what the delay occurred an amendment to the Industrial Disputes Act passed in 1999 blended the protection against anti-union discrimination into the list of trade union rights available to Sri Lankans. Sections 32 A (a) – (f) of the amendment prohibits an employer from requiring a workman to join or refrain from joining a trade union, dismiss a workman by reason only of his membership of a trade union or of his engaging in trade union activities, give any inducement or promise to a workman for the purpose of preventing him from becoming, or continuing to be, a member, office bearer or representative of a trade union, preventing a workman from forming a trade union, interfere with the conduct of the activities of a trade union, dismiss, or otherwise take disciplinary action against, any workman or office-bearer of a trade union. The amendment provides a thick protection towards the

anti-union discrimination following the Convention No. 98 of labour standards.

E. Recognition of Trade Unions

The Right to Organize and Collective Bargaining Convention, 1949 (No. 98) Article 4 states that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. It is worthwhile to analyze whether such measures had been taken.

Industrial Disputes (Amendment) Act No. 56 of 1999 Section 32 A (g) provides that no employer can refuse to bargain with a trade union which has in its membership not less than forty *per centum* of the workmen on whose behalf such trade union seeks to bargain. Prevention and elimination of disputes through discussion is the best way to avoid conflicts in the industry. Thus collective bargaining which is one way of discussion enables conflict free dispute resolution mechanism that promotes sustainable industrial harmony. Thereby recognition of collective bargaining and preserving the right in every way in the legal framework corresponds with internationally recognized labour standards. Therefore a positive angle in the legal framework of Sri Lanka can be seen with the introduction of Section 32 A (g) to the amending act of Industrial Disputes in 1999.

Right to Strike

Trade Unions Ordinance No. 14 of 1935 does not specifically recognize the right to strike in a crystal clear way. But few indications of the said enactment can be used to justify that Sri Lanka's formal recognition of such right. First and foremost it can be noted that Section 2 of the said Act interprets "strikes" which gives an implication that trade unions are guaranteed such right in the enactment. Further in Section 18 (b) reads that unless a trade union is registered according to the procedure prescribed, it cannot take-part in strikes which indicate the fact that right to strike is available for the registered trade unions under the Act.

Judicial recognition of the right to strike can be pointed out in *Rubberite Company vs. Labour Department*, Court of Appeal Case No.104/86, in which Justice Sarath Silva held "... the basic right of workmen to strike to express their grievances and to win their demands is not only consistent with the international obligations undertaken by the Government of Sri Lanka in ratifying the Covenant on Economic, Social and Cultural Rights but also

consistent with the accepted standards in other national and regional jurisdictions. Therefore, I hold that under our law, workmen have a basic right to strike as a measure of Collective Action directed against the employer to express their grievances and to win their demands.”

But the lacuna is, where the International Covenant on Economic, Social and Cultural Rights in its Article 8 proposes the State parties to take measures to ensure the right to strike, still legal framework of Sri Lanka is founded upon an implied right, providing room for controversial interpretation.

IV. RECOMMENDATIONS

Aligning domestic laws on trade unions with that of international standards finds its foundation from the supreme law of the country, the Constitution of the democratic socialist republic of Sri Lanka. Further positive indications demonstrate in the enactments such as Trade Unions Ordinance No. 14 of 1935 and Industrial Disputes (Amendment) Act No. 56 of 1999.

But it is worthy to evaluate whether the attention on the matter is satisfiable.

Since Sri Lanka is a dualist country it requires the procedure of enacting legislation in order to incorporate the international standards which it has ratified. Therefore activist role of the legislature in terms of such incorporation is required which brings up the need for being concerned towards better international standards thoroughly by the State. For instance the right to strike requires an express recognition within the legal framework. It forms a conflict-free workplace relationship with a strong legal foundation.

Also it can use more judicial participation towards incorporation of international standards in the domestic legal arena. Without waiting for the action of the legislature which is a prolonged process, when it is needed judiciary can involve in the incorporation of international standards within the legal capacity in the process of attainment of justice. India is one such example where judiciary is actively participating on this objective.

Reason of the need for recognizing more labour standards on the subject in the domestic environment is to have a proper administration on the labour relations, to improve working conditions as pin-point by the union movements, improve quality and satisfaction of employees and improve the voice of togetherness in the industry.

When an approach of harmonized industrial relation is followed it inevitably will lead to better professional recognition where the voice of employees are heard and actively answered. Thereby a satisfied work-force will serve towards national development.

For such consequence a pure recognition of trade union rights taking international standards as prototype is more practical and possible.

V. CONCLUSION

Legal framework of Sri Lanka has its positive indications towards corresponding international standards in the area of trade union laws which inevitably enable professional recognition. It assists towards decision making in a way that promotes social justice as recognized in the international arena. It also provides platform to enhance human right aspect of labour relations.

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BIOGRAPHY OF AUTHOR

The author is a Lecturer (Probationary) at the Faculty of Law, General Sir John Kotelawala Defence University, Sri



Lanka. She has obtained LLB (Hons) from Faculty of Law, University of Colombo. Her research interests include Labour Rights, Environmental Rights and Constitutional Law.].